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November 11, 2015

Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463
VIA FACSIMILE: (202) 219-3923

Re: MUR 6958 – Response to Complaint from W. Todd Akin and
Todd Akin for Senate

Dear Mr. Jordan:

We are writing this letter on behalf of our clients, W. Todd Akin, Todd Akin for Senate in response to a Complaint filed by the Foundation for Accountability and Civic Trust ("Complainant"). The Complaint alleges that Democratic Senator McCaskill violated the Federal Election Campaign Act of 1971, as amended, (the "Act"), and Federal Election Commission Regulations by sharing polling data with Todd Akin and his principal campaign committee, Todd Akin for Senate (the "Akin Committee"). Akin was a Republican candidate participating in the Missouri 2012 Republican primary election for U.S. Senate.¹

The Complaint is based on a Politico Magazine story by Senator McCaskill entitled "*How I Helped Todd Akin Win – So I Could Beat Him Later*," where Senator McCaskill gloats about how she allegedly convinced the Akin Committee to keep airing a television advertisement ("Huckabee ad") that was supposedly boosting Akin's poll numbers and could help him win the primary.² Senator McCaskill claims she gave polling information to the Akin Committee, access to her pollster, and that "three hours later the Huckabee ad was back up."³ Senator McCaskill may wish to portray herself as being a political savant by playing in an opposing party's primary; however, there is no evidence (beyond Senator McCaskill's grandstanding) to suggest that Akin or the Akin Committee actually received polling data from Senator McCaskill or anyone associated with her campaign. As such, any allegations that Akin or the Akin Committee

¹ We note that the Complaint does not name Akin or the Committee as Respondents in this matter.

² See Sen. Claire McCaskill, *How I Helped Todd Akin Win—So I Could Beat Him Later*, Politico Magazine, August 11, 2015.

³ *Id.*

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violated the Act or Commission regulations by receiving an in-kind contribution in the form of polling data should be immediately dismissed.

I. Background and Analysis

In 2012, Akin was involved in a three-way primary for the Republican nomination for U.S. Senate from Missouri. Far from being the "weakest fundraiser out of the 3 potential nominees," Akin actually raised and spent over \$2.2 million dollars in connection with the primary election—clearly more than the \$1.7 million the McCaskill Committee allegedly paid to influence the Republican primary.⁴ Contrary to Senator McCaskill's assertion, the Akin Committee had the money to conduct its own polling.⁵

During the primary, the Akin Committee aired an ad featuring former Arkansas Governor. According to the Politico article, this ad was allegedly moving the polling numbers and helping the Akin Committee. The Politico article alleges that at some point before the primary election, the Akin Committee replaced the Huckabee ad with an ad about "Flames of Freedom." The Politico article claims that Senator McCaskill contacted a Democratic operative who was friends with a former Akin Committee staff person to get a message to the Akin Committee to continue airing the Huckabee ad because it would ensure he would win the primary.⁶ At that point, the Politico article claims that the McCaskill Committee's campaign manager received a call from the Akin campaign who wanted to speak with the McCaskill Committee's pollster, and that Senator McCaskill gave the pollster permission to "speak in broad generalities." The Politico article then claims that three hours after the alleged conversation with the pollster, the Akin Committee put the Huckabee ad back on the air.

The Akin Committee, however, never aired the "Flames of Freedom" ad. That ad only appeared on the Akin Committee's website. Moreover, it is not plausible that the Akin Committee could have changed the ad traffic within three hours of speaking with a pollster. The lead time to change an ad requires more time than that so any decision to change traffic would have to have been made prior to the conversation with the pollster.

In fact, the Akin Committee ran an ad before the conclusion of the primary entitled "Earmarks" and then decided to finish with the positive ad by Governor Huckabee. At no time was Akin aware that anyone connected with the McCaskill campaign was in contact with his Committee. Significantly, the Politico article does not name the person from the Akin Committee who allegedly called the McCaskill Committee and spoke with the McCaskill Committee pollster. Moreover, the idea that a sitting U.S. Congressman who had won re-election six previous times would base such a decision on the political opinion of an unknown pollster associated with his presumed Democratic opponent is absurd.

Finally, speaking in "broad generalities" about a poll does not constitute an in-kind contribution. The Commission's regulation regarding the allocation of polling expenses states

⁴ *Id.* at 3-4.

⁵ *Id.* at 5.

⁶ *Id.* at 5.

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that "[T]he purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized political committee... is a contribution in-kind by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee."⁷ Opinion polls generally provide a topline, which is a list of the questions asked and the overall response broken down by percentage, followed by crosstabs, that break down responses to the questions in greater detail, e.g., demographics, age, gender, political party affiliation, income, etc. The results of a poll include both the topline and the crosstabs. Only providing "broad generalities" about a poll without the corresponding crosstabs does not result in an "acceptance of poll results." As such, even if someone from the Akin Committee had a conversation with the McCaskill Committee's pollster, that conversation does not result in an in-kind contribution from the McCaskill Committee to the Akin Committee.

II. Conclusion

The Complaint in this matter is based on a Politico article that is full of inaccuracies and falsehoods. There is no evidence that anyone from the Akin Committee actually received polling data from the McCaskill Committee or its pollster. Therefore, we respectfully request that any allegations raised against Akin and the Akin Committee be immediately dismissed.

Respectfully submitted,



Charles R. Spies
Elizabeth Beacham White

⁷ 11 C.F.R. § 106.4(b).

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BEFORE THE FEDERAL ELECTION COMMISSION STATEMENT OF DESIGNATION OF COUNSEL

MUR # 6958

Name of Counsel: Charles R. Spies
Clark Hill PLC
601 Pennsylvania Avenue, NW
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Washington, DC 20004

Telephone: (202) 572-8663
Fax: (202) 572-8683

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Nov. 11, 2015
Date


Respondent/Client Signature

Title

Respondent/Client: W. Todd Akin
3370 Bouquet Road
Pacific, MO 62069

Telephone - Home:

Business:

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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Nov. 11, 2015

Date



Respondent/Client Signature

Title

Respondent/Client:

Todd Akin for Senate
W. Todd Akin, Treasurer
3370 Bouquet Road
Pacific, MO 62089

Telephone - Home:

Business:

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